



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/554,078	11/07/2006	Ronald Geoffrey Hamblin	03164.0193USWO	4474
23552 7590 12/17/2010 MERCHANT & GOULD PC P.O. BOX 2903 MINNEAPOLIS, MN 55402-0903			EXAMINER DEMERE, CHRISTOPHER R	
			ART UNIT 3782	PAPER NUMBER
			MAIL DATE 12/17/2010	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/554,078

Applicant(s)

HAMBLIN ET AL.

Examiner

CHRISTOPHER DEMEREE

Art Unit

3782

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 September 2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date. _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Objections

1. Claim 5 is objected to because of the following informalities: Claim 5 contains a grammatical error with “the side walls include flaps that *are form* part”. Appropriate correction is required.

Drawings

2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the “locking tabs on the side walls” [Claim 4] must be shown or the feature(s) canceled from the claim(s). Examiner notes that the locking tabs are on the side wall flaps, not the side walls (Figure 3). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as “amended.” If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either “Replacement Sheet” or “New

Art Unit: 3782

Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 1-16 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

5. Claim 1 recites, "corners of the tray between the base and the side walls, the base and the end walls..." It is unclear how a corner is between the base and the side/end walls since the only a fold (11) exists between the base and said side/end walls. For purposes of examining the claims on the merits Examiner considers a "corner" to be any edge.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1-7 and 9-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schramm et al. (US 5226588 A; hereinafter Schramm) in view of Beerend (US 3155304 A).

Regarding claims 1-3 and 13-18, Schramm teaches a box comprising a rectangular base (12), upright side walls (18 and 20) and end walls (14 and 16) extending from the base, and a locking assembly (tabs 84, 86, 88, 90 and slots 96, 98) that holds the side walls and the end walls in upright positions with the corners of the tray and therefore the corners of the baked food product produced in the tray being straight and squared (see Fig. 3; Examiner notes that the walls are in perpendicular relationship to the base). Schramm lacks teaching that his paperboard container is used for baking. Examiner considers any box formed from a blank to comprise walls that can be folded outwardly and downwardly to deform said box into a collapsed state. Examiner also considers paperboard capable of flexing and therefore the sidewalls of Elkin's container are capable of bending to form a generally concave sidewall [Claim 2].

Beerend teaches a baking pan made of paper and that it is old and well-known to use paperboard trays in baking applications (Col 1 lines 10-15). Therefore, it would have been obvious to one of ordinary skill in the art at the time of Applicant's application to modify Schramm's paperboard tray to be suitable for baking, as taught by Beerend.

Regarding claims 4 and 6, Schramm, as modified above, teaches a folded box wherein the locking assembly includes locking tabs on the side walls (Schramm; Examiner notes that the locking tabs extend from the side walls 18 and 20 via fold lines 70 and 68) and slots (Schramm; 96 and 98) in the end walls that receive the locking tabs and releasably hold together the end walls and the side walls.

Regarding claims 5, 7, 11 and 12, Schramm, as modified above, teaches a folded box wherein the side walls include flaps (Schramm; 30, 32, 34, 36) that form part

Art Unit: 3782

of the end walls of the tray. Examiner notes that the gusset panels extend from the side walls and help form the ends of the container.

Regarding claims 9 and 10, Schramm, as modified above, teaches a blank for forming the tray defined in claim 1 includes a series of panels separated by fold lines and the panels include (a) a base panel (Schramm; 12) that is adapted to form the base of the tray, (b) side wall panels (Schramm; 18 and 20) adjoining the base panel along opposite sides of the base panel that are adapted to form the upright side walls of the tray, (c) end wall panels (Schramm; 14 and 16) adjoining the base panel at opposite ends of the base panel, hereinafter referred to as the "base flaps," and (d) end wall panels adjoining the side wall panels at opposite ends of the side wall panels (Schramm; 64, 66), hereinafter referred to as "side wall flaps," wherein the base flaps and the side wall flaps are adapted to form the end walls of the tray (Schramm; tabs 84, 86, 88, 90 inserted into the end walls), and wherein the base flaps and the side wall flaps include the locking assembly.

8. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Schramm in view of Beerend as applied to claim 7 above, and further in view of Groh (US 5050766 A).

Regarding claim 8, Schramm, as modified above, teaches everything except gusset corners that extend no more than one third the height of the tray. Groh teaches a collapsible ice chest comprising folds (40 and 42) that create lower gusset corners (in conjunction with fold 30); said lower gusset corners extend no more than one third the height of the tray (see Fig. 4). It would have been obvious to one of ordinary skill in the

Art Unit: 3782

art at the time of Applicant's invention to further modify Schramm's container to include the fold lines (Groh; 40 and 42) in order to make the container collapsible, as taught by Groh.

Response to Arguments

9. Applicant's arguments, see Pages 6-9, filed 9/30/2010, with respect to the rejection(s) of claim(s) 1-18 under USC 103(a)—Elkin in view of Beerend have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of USC 103(a)—Schramm in view Beerend.

Conclusion

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to CHRISTOPHER DEMEREE whose telephone number is

Art Unit: 3782

(571)270-1982. The examiner can normally be reached on Mon-Fri, 8:00 AM-5:00PM, Alt Fri, EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Newhouse can be reached on (571) 272-4544. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Christopher Demeree/
Examiner, Art Unit 3782

/Nathan J. Newhouse/
Supervisory Patent Examiner, Art Unit 3782